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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,421	03/20/2001	David Weiss	2420-0034	9918

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EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/23/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/811,421

Applicant(s)

WEISS ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-30 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-30, and 32-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15-30 and 32-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 15, 19, 28, and 29, it has not been adequately disclosed that the outer wall has a substantially circumferentially contiguous inner surface. This is a new matter rejection. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-30 and 32-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 15, 19, 28, and 29, it has not been adequately disclosed that the outer wall has a substantially circumferentially contiguous inner surface. It is not clear what is being claimed. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 16, 18-20, 22-26, 28-30, 32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (US 5,538,154) in view of Bingisser (US 5,103,993). Regarding claim 15, Von Holdt teaches all the limitations but does not teach the access opening formed in the closure surface. Bingisser, as seen in Fig. 4 and Col. 3 lines 19 and 21, teaches a similar container structure with an access port 16 in the closure surface. It would have been obvious to employ the access opening of Bingisser in the container of Von Holdt to provide access to the container without removing the lid or to provide a pouring opening. See Fig. 10-12, where the closure surface extends from a lowermost portion of the inner wall. The portion of the inner wall to which the closure surface is attached is the lowermost portion. The closure surface does not have to extend from the lowest point on the inner wall to meet this limitation. As seen in Fig. 10, the openings 76 are in the transition wall. The openings extend around the periphery of the container lid as seen in Fig. 9 and there is at least one cut out in each quadrant of the rim. The outer wall is 14c and the inner wall is the wall to which the closure surface 12c is attached. The seal is formed along the inner wall between the openings 76 and the closure surface 12c. Regarding claims 16, 20, 24,

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and 30, see Fig. 9, where the cut outs are mutually spaced about the circumferential rim. Regarding claims 18, 22, 28, and 34, since the cut outs are spaced about the rim as seen in Fig. 9, there will be at least two diametrically opposed pairs of cut outs. Regarding claim 19, since there is at least one cut out in each quadrant the spacing limitation is met. Moreover, the diametrically opposed pairs will be spaced from each other by more than one quadrant. See the discussion of claim 15 regarding the lowermost portion limitation. Regarding claim 23, there is a cut out formed in each of the quadrant of the rim. Regarding claim 25, see Fig. 10 where the cut outs are formed in the transition wall. Regarding claims 26 and 32, see Figs. 12-14 where the cut outs can be formed in the outer wall of the rim. A portion of the brim will be visible through the opening as seen in Fig. 13. Regarding claims 29 and 31, the cut outs are formed in the transition wall as seen in Fig. 10. See the discussion of claim 19 regarding the cut outs being spaced from each other by at least a quadrant or greater. Regarding claims 15, 19, 23, and 29, the new matter is not required by the reference. To the degree that it is not new matter the Lid of Von Holdt has an outer wall at is substantially contiguous as seen in Fig. 2.

Response to Arguments

Applicant's arguments filed 12/18/03 have been fully considered but they are not persuasive. The new limitation to the independent claims represents new matter. Moreover the container of Von Holdt satisfies the new limitation as seen in Fig. 2. This is the part that is between 27 and openings 26.

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Conclusion

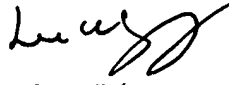
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1148.

JCM
March 19, 2004


3/19/04
LEE YOUNG
SUPERVISORY PATENT EXAMINEE
TECHNOLOGY CENTER 3700